

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



# TRANSCRIPT OF RECORD.

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## Court of Appeals, District of Columbia

APRIL TERM, 1907.

No. 1755.

473

No. 1, SPECIAL CALENDAR.

JAMES P. STOREY AND ANNIE CORDELIA SCHLEY,  
APPELLANTS,

vs.

JAMES STOREY AND MARY JOHNSON.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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FILED FEBRUARY 12, 1907.



COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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# In the Court of Appeals of the District of Columbia.

No. 1755.

JAMES P. STOREY ET AL., Appellants,  
*vs.*  
JAMES STOREY ET AL.

1 In the Supreme Court of the District of Columbia, Holding  
a Probate Court.

*In re* Estate of JAMES STOREY, Dec'd. Admn., No. 13,362.

*Petition of James Storey and of Mary Johnson for Probate of Will  
and Letters Testamentary.*

To the Honorable Justice of the Supreme Court of the District of  
Columbia holding a Probate Court:

Your Petitioners respectfully represent to the Court:

1. That heretofore, to wit, on the 18th day of December, 1905,  
one, James Storey, late of the City of Washington, District of Colum-  
bia, departed this life at his residence, leaving a paper writing bear-  
ing date February 4, 1902, purporting to be his last will and testa-  
ment, which has been filed with the Register of Wills for probate and  
record.

2. Said decedent left no widow and the only persons surviving him,  
who as your Petitioners are advised and believe, are his heirs at law  
and next of kin, are his children, James Storey and Mary Johnson,  
your Petitioners, and Isabelle Branson, all of full age and of the  
District of Columbia, and Jane Cornwell, of full age, a resident  
of Silver Hill, Maryland, and the following named grandchildren:—  
James P. Storey and Annie C. Storey, children of John Storey, de-  
ceased, both of full age and residents of the said District of Colum-  
bia, and Eli Kinsilow, husband, and James Kinsilow, Herbert

2 Kinsilow, Eva M. Payne and Samuel Kinsilow, children of  
Eliza Kinsilow, deceased, residents of Independent Hill, Vir-  
ginia, all of whom except the two last named, are of full age. That  
the said Eva M. Payne and Samuel Kinsilow are respectively of the  
ages of nineteen and seventeen years.

3. Your Petitioners further state that so far as they have any  
knowledge, the decedent left no personal property other than a gold  
watch and chain and a few articles of furniture, etc., the value of  
which will not exceed the sum of two hundred dollars, and the sum  
of one hundred dollars in cash, left by the decedent in the posses-

sion of your petitioner, Mary Johnson, to help defray the expenses of his burial. That there are no debts other than those incident to his last illness and funeral.

4. That he was seized of real estate located in the City of Washington, District of Columbia, as follows:—Lots numbered six (6) and eleven (11) in Square six hundred and fifty-six (656), improved by three frame houses, the value of which your Petitioners are unable to state.

Wherefore, the premises being considered, your Petitioners pray:—

First, that process may be issued directed to the said heirs at law and next of kin of James Storey, deceased, requiring them to appear and make answer unto this petition, and that as to such of them who may be returned "Not to be found," substituted service by publication may be had;

Second, that the said paper writing bearing date February 4, 1902, may be admitted to probate and record, as to real and personal property, as the last will and testament of James Storey, deceased and that Letters Testamentary may be granted unto your Petitioners, upon their filing a bond in such penalty as this Honorable Court may deem sufficient to secure the payment of debts due by the testator; and

Third, for such other and further relief as the nature of the case may require and to the Court may seem fit and proper.

JAMES STOREY.  
MARY JOHNSON.

W. RUSSELL GRAHAM,  
*Solicitor for Petitioners.*

DISTRICT OF COLUMBIA, ss:

James Storey and Mary Johnson, being first duly sworn, depose and say that they have read the foregoing Petition, by them subscribed, and know the contents thereof; that the facts therein stated upon their personal knowledge are true and as to those stated upon information and belief, they believe them to be true.

JAMES STOREY.  
MARY JOHNSON.

Subscribed and sworn to before me this 27th day of December, A. D. 1905.

[NOTARIAL SEAL.]

JOHN H. KING,  
*Notary Public.*

(Endorsement: Petition of James Storey and Mary Johnson for probate of will and granting of Letters Testamentary unto them. Filed Dec. 28, 1905. James Tanner, Register of Wills, D. C., Clerk of Probate Court. W. Russell Graham, Solicitor for Petitioners.)

#### 4 *Last Will and Testament of James Storey.*

I, James Storey of Silver Hill, Prince Georges County, State of Maryland, formerly of the District of Columbia, being of sound and



disposing mind and memory, do make public and declare this to be my last will and testament, hereby revoking all former wills by me at any time made.

1. I give and devise to my son James Storey, his heirs and assigns forever the South one-half of Lot No. Eleven (11) in Square No. 656, situate on  $\frac{1}{2}$  St. S. W., in the City of Washington, District of Columbia with the improvements thereon, provided he shall within six months after my death pay to my daughter Jane Cornwell the sum of \$100., and shall also pay one-fourth of the expense of my last sickness and funeral, and one-fourth of the amounts hereinafter bequeathed to my six grand-children.

2. I give and devise to my daughter Mary Johnson, wife of Andrew J. Johnson, her heirs and assigns forever, the North one-half of Lot No. six (6) in Square No. 656, situate on 1st St. S. W., in the City of Washington, District of Columbia, with the improvements thereon, provided she shall within six months after my death pay to my daughter Jane Cornwell the sum of \$100., and shall also pay one-fourth of the expense of my last sickness and funeral, and one-fourth of the amounts hereinafter bequeathed to my six grand-children.

3. I give and devise to my daughter Isabelle Branson, wife of John Branson, her heirs and assigns forever, the South one-half of Lot No. six (6) in Square No. 656, situate on 1st St. S. W. in the City of Washington, District of Columbia, with the improvements thereon, provided she shall within six months after my death  
5 pay to my daughter Jane Cornwell the sum of \$100., and shall also pay one-fourth of the expense of my last sickness and funeral, and one-fourth of the amounts hereinafter bequeathed to my six grandchildren.

4. I give and devise to my daughter Jane Cornwell, wife of Newton Cornwell, her heirs and assigns forever, the North one-half of Lot No. eleven (11) in square No. 656 situate on  $\frac{1}{2}$  St. S. W. in the City of Washington, District of Columbia, provided my other three children above named shall each pay to the said Jane Cornwell the sum of \$100 each as aforesaid, and provided the said Jane Cornwell shall pay one-fourth of the expense of my last sickness and funeral, and one-fourth of the amount bequeathed to my six grandchildren.

5. I give and bequeath the sum of Five dollars each to my following named grandchildren, to wit: James P. Storey, Annie C. Storey, James Kinsilow, Herbert Kinsilow, Samuel Kinsilow and Eva Kinsilow.

6. I give and bequeath to my son James Storey my gold watch and chain.

7. I give and bequeath to my daughter Isabelle Branson the feather bed, bolster and pillow that is now in the possession of my grand-son Edward Storey.

8. I give and bequeath to my daughter Jane Cornwell all the personal property that is now in the possession of the said Jane Cornwell.

9. That if either or all of my three children, James Storey, Mary Johnson and Isabelle Branson, shall fail or refuse to pay the \$100 each to the said Jane Cornwell, as hereinbefore stipulated, within six months from the date of my death, or shall fail or refuse to pay their one-fourth of the expense of my last sickness and funeral and one-fourth of the amounts above bequeathed to my six grandchildren, then and in such event I direct that my executor and executrix hereinafter named shall sell all of my Real Estate and from the proceeds thereof, after the payment of my just debts and funeral expenses, and the bequeaths to my grandchildren divide the balance equally among my four children above named.

6 And lastly I do constitute and appoint my said son James Storey executor and my said daughter Mary Johnson executrix of this my last will and testament, and I request that they be not required to give bond for the performance of their duties as such, and also request that they make no charge for their services as such.

Witness my hand and seal this 4th day of February, A. D. 1902.

his  
JAMES x STORY. [SEAL.]  
mark.

Witnesses:

WILLIAM E. JORDAN.  
LOUIS J. SMITH.  
MARY F. SHRYOCK.

Signed, published and declared by the above named testator James Storey, as and for his last will and testament, in the presence of the undersigned, who, in his presence, and at his request, in the presence of each other have signed our names as subscribing witnesses hereto.

WILLIAM E. JORDAN,  
*Anacostia, D. C.*  
LOUIS J. SMITH,  
*Anacostia, D. C.*  
MARY F. SHRYOCK,  
*Anacostia, D. C.*

(Endorsement: Filed Dec. 27, 1905. James Tanner, Register of Wills D. C., Clerk of Probate Court.)

7

Form No. 1.

Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

On this 27th day of December, A. D. 1905 personally appeared W. Russell Graham who on oath says that he does not know of any will or codicil of James Storey late of said District, deceased, other than the foregoing instrument of writing dated February 4, 1902; that he received the same from Mary Johnson and that said James Storey died on or about the eighteenth day of December, 1905.

W. RUSSELL GRAHAM,  
1304 F Street N. W.

Sworn to and subscribed before me,

WM. C. TAYLOR,

*Deputy Register of Wills for the District of  
Columbia, Clerk of the Probate Court.*

8 Supreme Court of the District of Columbia, Holding a Probate Court.

TUESDAY, October 23, 1906.

Mr. Justice Barnard presiding.

*In re* Estate of JAMES STOREY, Deceased. No. 13,362, Adm. Doc. 34.

This cause coming on to be heard it is ordered by the Court, with consent of the Justice holding Criminal Court numbered Two (2), that the issues in this cause be tried by the jury summoned and now in attendance upon that Court: whereupon, upon consideration thereof, it is further ordered by the Court that the Caveatees James Storey and Mary Johnson, shall be Plaintiffs, and that the Caveators, James P. Storey, Annie C. Storey, Eli Kinchloe, James Kinchloe, and Herbert Kinchloe and Samuel Kinchloe, by their guardian *ad litem*, Eli Kinchloe, and Eva M. Payne by her guardian *ad litem*, Lemuel Fugitt, shall be defendants in the trial of said issues: whereupon come here as well the (Caveatees) Plaintiffs, by their attorneys, W. Russell Graham and Herbert A. Wrenn, and the (Caveators) Defendants, by their attorney, J. S. Easby Smith, and a jury of good and lawful men of the District of Columbia, to wit:

F. J. Killian  
Wm. H. Amiss  
Patrick Dugan  
Hugo Hense  
N. H. Pyles  
James Lockhead

C. B. Stewart  
Isaac Newman  
Samuel Filius  
P. R. Wilson  
W. T. Green  
F. P. Dove

9 who being duly sworn to try and true answers make to said issues after the case is given them in charge, upon their oath say:

In answer to the first issue:

Was the paper writing dated February 4, 1902, purporting to be the last will and testament of said James Storey, executed and attested in due form as required by law?

They answer "Yes."

In answer to the second issue:

Was the said James Storey, on the said 4th day of February, 1902, the date when said paper writing purports to have been executed, of sound and disposing mind and capable of executing a valid will and testament?

They answer "Yes."

In answer to the third issue:

Was the said paper writing, dated the 4th day of February, 1902, executed by the said James Storey under the influence of suggestions, importunities and undue persuasions of Jane Cornwell or of

Mary Johnson, daughters of the said decedent, or of any other person or persons?

They answer "No."

In answer to the fourth issue:

Was the execution of said paper writing dated February 4, 1902, procured by fraud or duress practiced upon the said James Storey by Jane Cornwell or Mary Johnson, or by any other person or persons?

They answer "No."

10

*Docket Entries.*

1906, Oct. 23. Order that issues be tried by jury in attendance upon Criminal Court No. 2.

" " " Order making Caveatees Plaintiffs and Caveators Defendants.

" " " Jury sworn.

" " " Witnesses for Caveatees 5.

" " " Verdict sustaining will.

11 Supreme Court of the District of Columbia, Holding Probate Court.

*In re* Estate of JAMES STOREY, Deceased. No. 13,362,  
Administration.

The infant respondents Samuel Kinsilow (otherwise Kinchloe) and Herbert Kinsilow (otherwise Kinchloe) being produced in open Court and consenting thereto, it is thereupon by the Court this 10th day of January, 1906, adjudged and ordered that Eli Kinchloe be, and hereby is, appointed guardian *ad litem* to answer for each of said respondents.

WENDELL P. STAFFORD, *Justice.*

(Endorsement: Order appointing Eli Kinchloe guardian *ad litem* for Herbert and Samuel Kinchloe. Filed Jan. 10, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

12 Supreme Court of the District of Columbia, Holding Probate Court.

*In re* Estate of JAMES STOREY, Deceased. No. 13362,  
Administration.

The answer of Eli Kinchloe to the petition of James Storey and Mary Johnson,—as guardian *ad litem* for Herbert Kinchloe and Samuel Kinchloe—states that as such guardian *ad litem* he confides the interests of his wards to the care of the Court.

ELI KINCHLOE.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof; that the facts therein stated as of my

personal knowledge are true; and those stated upon information and belief, I believe to be true.

ELI KINCHLOE.

Subscribed and sworn to before me, this 10th day of January, 1906.

WM. C. TAYLOR,  
*Deputy Register of Wills.*

(Endorsement: Answer of Eli Kinchloe. Filed Jan. 10, 1906. James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

13 In the Supreme Court of the District of Columbia, Holding  
a Special Term for Probate Business.

*In re* Estate of JAMES STOREY. No. 13362.

The Answer of James P. Storey; Annie C. Storey; Eli Kinchloe (otherwise Kinsilow); James Kinchloe (otherwise Kinsilow) to the petition filed herein on the 28th day of December 1905 by James Storey and Mary Johnson, praying probate of a certain paper writing purporting to be the last Will and Testament of said decedent, respectfully sets forth:

1., 2. They admit as true the allegations contained in paragraphs 1, 2; except the statement in paragraph 1 that decedent left a Will.

3. They deny the statement contained in paragraph 3 as to the personalty possessed by decedent; but have no knowledge as to his indebtedness.

4. They admit the allegation of paragraph 4 as to the realty of decedent, and are likewise ignorant as to the value of the improvements thereon.

Further answering the said petition the respondents state that they deny that the said paper writing was signed and executed by the said decedent. They further deny that said decedent had testamentary capacity; if he signed the same. They further deny that decedent, if he signed said paper writing, did so of his own volition, but allege that he was coerced by the beneficiaries therein

14 named, particularly Jane Cornwell and Mary Johnson, or either of them, to execute the same; and that the same was obtained from decedent by the fraud, duress and undue influence exercised over him by the said beneficiaries, particularly the said Jane Cornwell and Mary Johnson, or either of them. The respondents for these reasons, submit that said paper writing should be denied probate as the last Will and Testament of said decedent; or, if probated at all, it should be after the verdict of a jury, upon suitable issues framed, negating the allegations of this answer.

JAMES PHILIP STOREY.  
ANNIE C. STOREY.  
ELI KINCHLOE.  
JAMES KINCHLOE.

We and each of us, do solemnly swear that we have read the answer by us subscribed and know the contents thereof; that the facts therein stated as of our personal knowledge are true; and those stated upon information and belief, we believe to be true.

JAMES PHILIP STOREY.

ANNIE C. STOREY.

ELI KINCHLOE.

JAMES KINCHLOE.

Sworn to and subscribed before me this 4th day of January 1906 by Jas. P. Storey.

WM. C. TAYLOR,  
*Deputy Register of Wills.*

15 Subscribed and sworn to before me this 4th day of January 1906 by Annie C. Storey.

ANTHONY L. RAY,  
*Notary Public, D. C.*

[NOTARIAL SEAL.]

Sworn to and subscribed before me by Eli and James Kinchloe this 10th day of January A. D. 1906.

WM. C. TAYLOR,  
*Deputy Register of Wills.*

(Endorsement: Answer to petition of James Storey and Mary Johnson. Caveat. Filed Jan. 10, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court. J. H. Adriaans Attorney for respondents named.)

16 Supreme Court of the District of Columbia, Holding Probate Court.

*In re* Estate of JAMES STOREY, Deceased. No. 13362, Administration.

It appearing to the Court that Eva M. Payne, one of the infant respondents herein, has been duly served with notice by publication as required by law, she being a non-resident of the District of Columbia; and it further appearing to the Court that she has failed to appear herein as required by said notice, therefore, it is this 26th day of April, 1906

Ordered that Lemuel Fugitt be and he hereby is appointed Guardian *ad litem* for said Eva M. Payne, to make answer for her unto the Petition for the probate of the paper writing filed herein, as the last will and testament of James Storey, deceased.

By the Court:

WENDELL P. STAFFORD, *Justice.*

(Endorsement: Order appointing Lemuel Fugitt Guardian *ad litem* for Eva M. Payne. Filed Apr. 26, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

17 In the Supreme Court of the District of Columbia, Holding  
a Probate Court.

*In re* the Estate of JAMES STORY, Deceased. Administration, No.  
13362.

*Answer of Guardian ad litem.*

Your relator having been appointed guardian *ad litem* to make answer for Eva M. Payne, an infant residing outside of the jurisdiction of this court, and who has been served with notice by publication, for answer says that he submits whatever interest the said infant has in this cause to the care and protection of this court.

LEMUEL FUGITT,  
*Guardian ad litem.*

April 30, 1906.

Subscribed and sworn to before me this 11 day of May A. D. 1906.

WM. C. TAYLOR,  
*Deputy Register of Wills.*

(Endorsement: Answer of Guardian *ad litem* for Eva M. Payne, infant. Filed Apr. 30, 1906. James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

18 MAY 4, 1906.

Lemuel Fugitt, Esq., 711 D St., S. E., Washington, D. C.

SIR: Please call and make oath to your answer as Guardian *ad litem* for Eva M. Payne, #13,362.

Your attention is called to Probate Court Rules, (19).

Very respectfully,

\_\_\_\_\_  
*Register of Wills.*

NOTE.—Above letter substituted for letter of Lemuel Fugitt, Attorney for Caveators, to the Court, dated May —, 1906, which cannot be found with the papers in the case.

(Endorsement: Letter to Lemuel Fugitt, G'd'n *ad litem*, asking him to call and make oath to his answer. May 4, 1906.)

19 No. 13362. JAMES STOREY, Deceased.

MAY 26, 1906.

W. Russell Graham, Esq., Columbian Building, Washington, D. C.

SIR: By direction of the Court the following request has been filed with the above cited case, viz:

"I desire to be heard on any Issues that may be presented to the Court.

LEMUEL FUGITT,  
*Att'y for Caveators."*

Very respectfully,

\_\_\_\_\_,  
*Register of Wills.*

(Endorsement: Letter to W. Russell Graham, containing request of Att'y for Caveators. May 26, 1906.)

20 NOTE.—Motion to frame issues (No. 10 of stipulated designation) does not appear on docket and is not with papers in this case.)

21 In the Supreme Court of the District of Columbia, Holding a Probate Court.

*In re* Estate of JAMES STOREY, Deceased. Admn., No. 13362.

Upon consideration of the petition for the probate of the paper writing dated February 4, 1902, as the last will and testament of James Storey, deceased, and of the caveat of James P. and Annie C. Storey, and Eli and James Kinchloe thereto, it is by the Court, this 1st day of June, 1906, on behalf of the infant respondents and of all other parties herein,

Ordered that the following issues be and they are hereby directed to be sent to the Circuit Court of the District of Columbia for trial:

1. Was the paper writing dated February 4, 1902, purporting to be the last will and testament of said James Storey, executed and attested in due form as required by law?

2. Was the said James Storey, on the said 4th day of February, 1902, the date when said paper writing purports to have been executed, of sound and disposing mind and capable of executing a valid will and testament?

3. Was said paper writing, dated the 4th day of February, 1902, executed by the said James Storey under the influence of suggestions, importunities and undue persuasions of Jane Cornwell or of Mary Johnson, daughters of the said decedent, or of any other person or persons?

4. Was the execution of said paper writing dated February 4, 1902 procured by fraud or duress practiced upon the said James Storey by Jane Cornwell or Mary Johnson, or by any other person or persons?

By the Court:

WENDELL P. STAFFORD, *Justice.*

(Endorsement: Order framing issues to be tried by the Circuit Court. Filed Jun- 1, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)



23 In the Supreme Court of the District of Columbia, Holding  
a Probate Court.

*In re* Estate of JAMES STOREY, Deceased. Admn., No. 13362.

Now come the proponents herein, by their attorneys, and move the Court that the issues heretofore framed in the above entitled cause be set for trial at such time and place and after such previous notice of trial as the Court may direct.

W. RUSSELL GRAHAM,  
HERBERT A. WRENN,  
*Attorneys for Proponents.*

To Lemuel Fugitt, Esq., attorney for contestants, Washington, D. C.:

Take notice that the above motion will be called for hearing by us on Friday, the 31st day of August, 1906, at 10 o'clock a. m., in the Probate Court, or as soon thereafter as Counsel can be heard.

W. RUSSELL GRAHAM,  
HERBERT A. WRENN,  
*Attorneys for Proponents.*

Service acknowledged August 23, 1906.

LEMUEL FUGITT,  
*Attorney for Contestants.*

(Endorsement: Motion to fix time and place for trial of issues. Filed Aug. 23, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court. W. Russell Graham, Herbert A. Wrenn, Att'ys for Proponents.)

24 In the Supreme Court of the District of Columbia, Holding  
a Probate Court.

*In re* Estate of JAMES STOREY, Deceased. Administration, No.  
13362.

On motion of counsel for the Proponents, it is this 31st day of August, 1906,

Ordered that the issues framed in this cause be set for trial on the 23d day of October, 1906, in this court.

By the Court. WENDELL P. STAFFORD, *Justice.*

(Endorsement: Order setting issues for trial on the 23 day of October, 1906. W. Russell Graham Herbert A. Wrenn Attorneys for Proponents. Filed Aug. 31 1906. James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

25 In the Supreme Court of the District of Columbia, Holding  
a Probate Court.

Administration, No. 13362.

JAMES STOREY ET AL., Proponents,

*vs.*

JAMES P. STOREY Contestants.

*Waiver of Notice of Trial of Issues.*

The undersigned, of the heirs of law and next of kin, hereby waive any and all notice to them which may be required by law, and,

more particularly, as required by Section 140 of the Code of Law of the District of Columbia, of the substance of the issues to be tried and the time and place of the trial thereof.

MARY JOHNSON.  
JAMES STOREY.  
ISABELLA BRANSON.  
her  
JANE x CORNWELL.  
mark.

Witnessed by:  
W. D. PYLES.

(Endorsement: Waiver of notice of substance and time of trial of issues. Filed Oct. 23, 1906. James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

26 In the Supreme Court of the District of Columbia, Holding  
a Special Term for Probate Business.

*In re* Estate of JAMES STOREY. No. 13362, Ad. Docket.

Now comes James P. Storey, Jr., one of the caveators hereto, by his Attorney James S. Easby-Smith, and moves the Court to assign a new day for the trial of the issues framed herein; and for cause thereof says that no copy of the issues herein and notice of trial, has been served on the Caveators, or any of them; nor on the guardian *ad litem* for the infant Caveator Eva Payne.

J. S. EASBY-SMITH,  
*Attorney for the Caveator.*

(Endorsement: Motion to assign a new day for trial of issues overruled & exception. J. B. Filed Oct. 23 1906. James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

27 TUESDAY, October 23, 1906.

Mr. Justice Barnard presiding.

*In re* Estate of JAMES STOREY, Deceased. No. 13362, Adm. Docket  
34.

This cause coming on to be heard it is ordered by the Court, with consent of the Justice holding Criminal Court numbered Two (2), that the issues in this cause be tried by the jury summoned and now in attendance upon that Court: whereupon, upon consideration thereof, it is further ordered by the Court that the Caveatees, James Storey and Mary Johnson, shall be Plaintiffs, and that the Caveators, James P. Storey, Annie C. Storey, Eli Kinchloe, James Kinchloe, and Herbert Kinchloe and Samuel Kinchloe, by their guardian *ad litem*, Eli Kinchloe, and Eva M. Payne, by her guardian *ad litem*, Lemuel Fugitt, shall be defendants in the trial of said issues: where-

upon come here as well the (Caveatees) Plaintiffs, by their attorneys, W. Russell Graham and Herbert A. Wrenn, and the (Caveators) Defendants, by their attorney, J. S. Easby-Smith, and a jury of good and lawful men of the District of Columbia, to wit:

F. J. Killian  
Wm. H. Amiss  
Patrick Dugan  
Hugo Hense  
N. H. Pyles  
James Lockhead

C. B. Stewart  
Isaac Newman  
Samuel Filius  
P. R. Wilson  
W. T. Green  
F. P. Dove

who being duly sworn to try and true answers make to said issues after the case is given them in charge, upon their oath say:

28 In answer to the first issue:

Was the paper writing dated February 4, 1902, purporting to be the last will and testament of said James Storey, executed and attested in due form as required by law?

They answer "Yes."

In answer to the second issue:

Was the said James Storey, on the said 4th day of February, 1902, the date when said paper writing purports to have been executed, of sound and disposing mind and capable of executing a valid will and testament?

They answer "Yes."

In answer to the third issue:

Was said paper writing, dated the 4th day of February, 1902, executed by the said James Storey under the influence of suggestions, importunities and undue persuasions of Jane Cornwell or of Mary Johnson, daughters of the said decedent, or of any other person or persons?

They answer "No."

In answer to the fourth issue:

Was the execution of said paper writing dated February 4, 1902, procured by fraud or duress practiced upon the said James Storey by Jane Cornwell or Mary Johnson, or by any other person or persons?

They answer "No."

#### *Docket Entries.*

1906, Oct. 23. Order that issues be tried by jury in attendance upon Criminal Court No. 2.

" " " Order making Caveatees Plaintiffs and Caveators Defendants.

" " " Jury sworn.

" " " Witnesses for Caveatees 5.

" " " Verdict sustaining will.

(Endorsement: Minute entry. Verdict sustaining will. Filed Oct. 23, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

29 In the Supreme Court of the District of Columbia, Holding  
a Probate Court.

*In re* Estate of JAMES STOREY, Deceased. Administration, No. 13362.

This cause coming on to be heard upon the pleadings and proceedings had herein and upon consideration of the verdict returned by the jury sitting in the trial of the issues heretofore framed in this cause, it is this 28th day of November, A. D. 1906,

Adjudged, ordered and decreed that the paper writing filed herein, dated the 4th day of February, 1902, and purporting to be the last will and testament of said decedent be, and the same hereby is admitted to probate and record as such last will and testament, as to both real and personal property, and that the caveatees recover from the caveators their costs occasioned by the filing of the caveat in this cause; and it is further

Ordered that Letters Testamentary be and they are hereby granted unto James Storey and Mary Johnson, the persons named as Executor and Executrix in said will, upon their filing a bond in this Court, in the penal sum of Five Hundred (500) Dollars, with such surety as the Court may approve, conditioned for the faithful performance of their duties as such Executor and Executrix.

By the Court:—

ASHLEY M. GOULD, *Justice.*

(Endorsement: Decree admitting will to probate and granting letters to James Storey and Mary Johnson. W. Russell Graham Herbert A. Wrenn Attorneys for Caveatees. Filed Nov. 28, 1906. James Tanner Register of Wills, D. C. Clerk of Probate Court.)

30 In the Supreme Court of the District of Columbia, Holding  
a Probate Court.

*In re* Estate of JAMES STOREY, Deceased. No. 13362.

Now come the caveators, James P. Storey and Annie Cordelia Storey, now Annie Cordelia Schley, and move the court to be allowed an appeal from the order admitting to probate and record the paper writing propounded as the last will and testament of James Storey, deceased, and to permit them to sever from the other caveators on appeal and to fix the bond for costs on said appeal.

J. S. EASBY-SMITH,  
*Attorney for Caveators, James P. Storey  
and Annie Cordelia Schley.*

Messrs. Herbert A. Wrenn and W. R. Graham, attorneys for  
Caveatees:

Please take notice that I shall call the foregoing motion to the attention of the Justice holding the Probate Court on Friday, the

7th day of December, 1906, at ten A. M., or as soon thereafter as counsel can be heard.

J. S. EASBY-SMITH,  
*Attorney for Caveators.*

31 James S. Easby-Smith, being first duly sworn, deposes and says, that he left a copy of the foregoing motion at the office of Herbert A. Wrenn and W. R. Graham, in the Columbian Building, Washington, D. C., on Tuesday, the 4th day of December, 1906, before four o'clock P. M.

J. S. EASBY-SMITH.

Subscribed and sworn to before me this 4 day of December, A. D. 1906.

[NOTARIAL SEAL.]      WALTER S. T. BROWN,  
*Notary Public, D. C.*

(Endorsement: Motion for allowance of appeal severance, and to fix bond, and affidavit of service. J. S. Easby-Smith, Atty. for Caveators. Filed Dec. 4, 1906. James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

32 In the Supreme Court of the District of Columbia, Holding a Probate Court.

*In re* Estate of JAMES STOREY. Probate, No. 13362.

This cause coming on for further hearing upon the decree passed herein on the 28th day of November, A. D. 1906, admitting to probate and record the paper writing propounded as the last will and testament of James Storey, deceased, and the Caveators, James P. Storey and Annie Cordelia Storey, now Annie Cordelia Schley, having by their consent in open court announced a desire to note an appeal from said decree and desiring to sever from the other Caveators on appeal, it is by the Court this 10th day of December, 1906, adjudged and ordered that said Caveators, James P. Storey and Annie Cordelia Schley, be and they are hereby allowed an appeal from said decree and permitted to sever on said appeal from the other Caveators; and that the bond on appeal be and it hereby is fixed at one hundred dollars, the appellants being hereby permitted to deposit with the Register of Wills in lieu of said bond the amount thereof in cash.

ASHLEY M. GOULD, *Justice.*

(Endorsement: Order for appeal bond. Filed Dec. 10, 1906. James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

16 JAMES P. STOREY ET AL. VS. JAMES STOREY ET AL.

33 Supreme Court of the District of Columbia, Holding Probate Court.

*In re* Estate of JAMES STOREY, Deceased. No. 13362, Adm.

Received of James P. Storey fifty dollars and a check dated Dec. 20, 1906, on the Washington Loan & Trust Co., for fifty dollars signed by Mrs. Lilian R. Martin, said money and check to be deposited in the Registry of the Court in lieu of bond as provided by order of the Court dated Dec. 10, 1906.

WM. C. TAYLOR,  
*Deputy Register of Wills.*

(Endorsement: Receipt of Deputy Register of Wills for money deposited in the Registry in lieu of bond. Filed Dec. 20, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

34 In the Supreme Court of the District of Columbia.

*In re* Estate of JAMES STOREY. Adm., No. 13362.

Upon motion of the caveators, James P. Storey and Anna Cordelia Schley, by their attorney James S. Easby-Smith, Esq., it is by the court ordered this 31st day of December, 1906, that the October Term of Criminal Court No. 2 be, and it hereby is prolonged until the twelfth (12th) day of January, 1907, for the purpose of settling the bill of exceptions in this case.

By the Court:

JOB BARNARD, *Justice.*

(Endorsement: Order extending term to settle Bill of Exceptions. Filed Dec. 31, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

35 In the Supreme Court of the District of Columbia, Holding a Probate Court.

*In re* Estate of JAMES STOREY, Deceased. Adm., 13362.

Messrs. W. Russell Graham and Herbert A. Wrenn, attorneys for Caveatees:

Please take notice that I shall request Mr. Justice Barnard, holding Criminal Court No. 2, to sign the Bill of Exceptions, a copy of which is hereby furnished you, in Criminal Court No. 2, on Friday, January 11th, 1907, at ten A. M., or as soon thereafter as counsel can be heard.

J. S. EASBY-SMITH,  
*Attorney for Caveator.*

Service of foregoing notice and copy of proposed bill of exceptions accepted this 31st day of December, 1906.

DISTRICT OF COLUMBIA, ss:

James S. Easby-Smith, being duly sworn, deposes and says, that on Monday, December 31st, 1906, at two o'clock P. M., he left a copy of the foregoing notice together with a copy of the attached proposed bill of exceptions in the above entitled case in the office of W. Russell Graham, Esq., and Herbert A. Wrenn, Esq., in the Columbia Building, Washington, D. C.

JAMES S. EASBY-SMITH.

Subscribed and sworn to before me this 7th day of January, 1907.

WALTER S. T. BROWN,

[NOTARIAL SEAL.]

Notary Public, D. C.

36 Supreme Court of the District of Columbia, Holding a Probate Court.

*In re* Estate of JAMES STOREY, Deceased. Adm., No. 13362.

*Bill of Exceptions.*

Be it remembered that this cause came on for hearing on October 23rd, 1906, before Mr. Justice Barnard and a jury in Criminal Court No. 2, for the trial of the issues framed herein, the caveatees being present in person and by their attorneys, W. Russell Graham, Esq., and Herbert A. Wrenn, Esq.; and the caveator James P. Storey being present in person and by his attorney James S. Easby-Smith, Esq., and the caveator Eva M. Payne, being present by her guardian *ad litem*, Lemuel Fugitt, Esq.,

Whereupon the caveator James P. Storey, by his attorney, Mr. Easby-Smith, filed in open court a motion that a new day be set for the trial of the issues on the ground that the said caveator had not been served with a copy of the issues and a notification of the time and place of the trial thereof, as provided by Section 140 of the Code, and in support of the motion offered as a witness the caveator JAMES P. STOREY, who, upon being questioned by the court stated that he is a grandson of the decedent and one of the caveators, that he had not been served with a copy of the issues or with a notification  
37 of the time and place of the trial thereof, that he had learned only one or two days before of the fact that the issues had been framed and set down for trial, and that his former attorney in the case had been Mr. J. H. Adriaans, who was disbarred in February, 1906. He further stated that his former attorney Mr. Adriaans, had recommended Mr. Easby-Smith, but stated that Mr. Easby-Smith said he could not represent him, the caveator, through Mr. Adriaans nor unless caveator came directly to him. That on this morning about half an hour before court opened caveator went directly to Mr. Easby-Smith, who agreed to represent caveator, and to endeavor to secure a new day to be fixed for the trial of the issues in order to be properly prepared for trial. Caveator further stated that

he had never employed Mr. Lemuel Fugitt, nor any other attorney, to represent him after Mr. Adriaans was disbarred until he went directly to Mr. Easby-Smith.

Thereupon Mr. Fugitt stated that Mr. Adriaans after the latter had been disbarred asked him to represent the caveators, and he had appeared on several occasions in their interest for Mr. Adriaans. That to the best of his recollection he had seen Mr. Storey about the case on one occasion. That he and Mr. Adriaans were both present at the time the issues were framed and the date of trial fixed, and thought he was acting for Mr. Storey.

But the court overruled the motion, and ordered the trial to proceed, to which ruling and order the caveator then and there reserved his exception.

And thereupon a jury was sworn to try the issues framed  
38 herein, and to deliver a true verdict thereupon, according to the law and the evidence. Whereupon, it was ordered by the court that the caveatees be plaintiffs and the caveators defendants.

And whereupon the following witnesses were sworn on behalf of the caveatees, and testified as follows:

WILLIAM E. JORDAN, called as a witness on the part of the caveatees, was first duly sworn and testified as follows:

Direct examination by Mr. GRAHAM:

Q. Mr. Jordan, I will ask you to look at that paper, (Exhibiting paper to witness). A. Yes, sir.

Q. Is that your signature, the first signature? A. Yes,  
39 sir.

Q. Did you see these parties here sign (indicating)? A. Yes, sir.

Q. Did you see this man sign (indicating)? A. Yes, sir.

Q. This signature here is signed by mark? A. Yes, sir.

Q. Who signed that? A. He did; his name is written in; it is in my hand-writing, yes, sir.

Q. And who made the mark? A. He did.

Q. Did each of these witnesses sign in the presence of James Storey? A. Yes, sir.

Q. Did they sign in the presence of each other? A. Yes, sir.

Q. Did Mr. Storey declare that to be his will? A. Yes, sir.

Q. I will ask you to state, Mr. Jordan, who prepared this paper? A. It was written—typewritten by our clerk, Miss Shryock, who is a witness here.

Q. Well, who gave the directions for the preparation of the paper? A. Mr. Storey, as I recall it; yes, Mr. Storey told me.

Q. Were you the attorney who—— A. (Interposing.) Yes, I drew the will, yes.

Q. Will you state under what circumstances Mr. Storey came to your office to have this paper prepared? A. He came there—he came with a lady, whom I afterwards understood, later on, was his granddaughter. Just came in there and said he wanted to make his



will, and, as I recall it, I think, he gave the facts to me and I asked my typewriter to prepare the will.

The COURT: I don't think you need go into that on the opening, because, if you make a *prima facie* case, of course, that would come in on rebuttal.

Mr. GRAHAM: Well, that is all I propose to show, is a *prima facie* case, but I will do away with that and prove the will by other witnesses. That is all, Mr. Jordan.

Mr. EASBY-SMITH: Well, I want to cross examine him.

The COURT: Yes, cross examine him.

By the COURT:

Q. What time did Mr. Storey die?

Mr. GRAHAM: December 18, 1905.

Mr. EASBY-SMITH: You haven't offered that in evidence yet.

Mr. GRAHAM: No, I am going to offer it.

40 Cross-examination.

By Mr. EASBY-SMITH:

Q. Was this paper in this condition when you put your signature on it, Mr. Jordan? A. Yes, sir.

Q. Did the erasures that exist in that will exist at the time that it was signed—I will call your attention and ask if they existed at the time. You see there is one (Indicating). There is a letter that has been rubbed out and something written over it. A. Yes, I think that was there; it is just a——

Q. There. (Indicating). Can you say if there are any erasures there that existed at the time you signed that as attesting witness? A. I should not—Miss Shryock was the typewriter—I think there may have been one or two of that kind, of a letter that was wrong; she may have——

Q. Was any note made by you at the time of any erasures or corrections in the will, either before or after it was signed? A. No, sir.

Q. Then those changes that have been made there, you can't state whether they were made before or after it was signed? A. No, sir. If they were made they were made before it was signed.

Q. How do you know? A. Well, of course, I usually—of course I look over a paper of that kind——

Q. Well, did you look over the paper before it was signed? A. Well, I don't recall—Yes, I read it to them.

Q. Well, do you have any recollection that any changes had been made before that will was signed? A. No.

Q. In whose possession was that will from the time it was signed until it was offered for probate, if you know? A. I think Mr. Richardson, my partner; he is away now; he is not here. I think he came in at the time we completed this will, put it in an envelope, sealed it up and handed it to this Mr. Storey. That is my recollection of it, I think. It is in his own handwriting.

Q. And from that time forward you don't know where it was?

A. No, sir. I think it was delivered to him then and there at that time.

Q. Now, Mr. Jordan, you say Mr. Storey came into your  
41 office. How long had you known Mr. Storey? A. I was not personally acquainted with him at all.

Q. Had you ever seen him? A. I think I had seen him two or three times in Mr. Pyles' store, but I never talked with the man before in my life?

Q. When you had seen him in Mr. Pyles' store did you know who he was? A. No, I didn't know the man at all, only by sight, you know.

Q. Did you ever see him after he signed this will? A. I don't recall that; I may have; I think I did; I don't recall that.

Q. Do you know, as a matter of fact, that the man who came into your office and put his mark to that paper was Mr. Storey, the decedent in this case. A. Well, he said his name was James Storey.

Q. Sir? A. He said his name was James Storey.

Q. Is that all you know about it? A. Yes, sir.

Q. That is all you know as to the man who came into your office as the decedent in this case? A. Yes, sir.

Q. Now, you say Miss Shryock typewrote this? A. Yes, sir.

Q. From what did she write it? A. Why—he gave me—he told me just what he wanted; how he wanted it made, as I understand—as I recall it, and I drafted it off roughly.

Q. In pencil? A. In pencil, yes, sir, and then read it off to her, as I usually did; that is my custom.

Q. You read it off to her? A. Yes sir; I dictated it to her.

Q. And she took it in stenographic notes? A. No.

Q. Oh, she sat there and typewrote it while you dictated it to her from your pencil notes? A. Yes, sir.

Q. When, if at all, did you read it to this man in your office? A. After she—after it was typewritten.

Q. After it was typewritten? A. Yes, sir.

Q. When was that, Mr. Jordan? A. I don't recall the date, about four years ago, I think, sir.

Q. About four years ago? A. Yes, sir; I don't recall the date; we never keep copies of the wills, you know, and this is the first time I have ever seen it since.

Q. Do you know who came into your office with that man  
42 that day? A. There was a lady. They drove down, I think, in a Dayton wagon, and I understand since—I have understood that it was his grand-daughter.

Q. His grand-daughter? A. Yes, sir.

Q. Do you know her name? A. No, sir.

Q. You didn't know her at the time, either? A. I didn't know her at the time; no, sir.

Q. Have you seen her since? A. I don't recall that.

Q. Do you know whether she is a witness here? A. I understand she is dead.

Q. You understand she is dead? A. Yes, sir.

Q. All that you know by hearsay? A. Yes, sir.

Q. Now, are you quite positive, Mr. Jordan, that those three sheets of paper, fastened together in that way are the three sheets of paper signed by that man in your office? A. Yes, sir; quite positive; no question about it.

Q. Did you see them get out of that buggy that day; this lady and gentleman? A. I don't recall that; I may have.

Q. About how old, apparently, was this man who signed this will? A. I judge about sixty-five years of age.

Q. Was he suffering from any disease at that time? A. Not that I know of. He seemed to be a little feeble.

Q. Feeble? A. Yes, sir; he was, as I recall it now.

Q. Do you know whether he was suffering with cancer at that time? A. I don't know.

Q. And you don't know whether he had to be helped out of the buggy and into it? A. I don't know that.

Q. You say this lady told you he had come there to make a will? A. He told me so himself. I don't recall the conversation, or what she said, but I know he talked with me about it and I took the notes from his——

Q. What did she have to say about the will, Mr. Jordan? A. I don't know.

Q. You don't recall that? A. I don't think she said anything, sir. I just think she said it was her grand-father.

Redirect examination by Mr. GRAHAM:

Q. Mr. Jordan, you stated that you dictated this paper to your typewriter? A. Yes, sir.

43 Q. Did Mr. Storey, the man supposed to be Mr. Storey, come into your office and give you notes? A. Yes, sir.

Q. And then go away and come back again to execute the paper, or was it executed on the same day? A. It was executed the same day. I don't recall whether he went out, but I think not. I don't think he went out at all; I don't recall; it has been four or five years ago; but the man who gave me these notes was the man who signed that paper, and we needed another witness and I went up the street and got Mr. Smith, he is here as a witness, and I called him in there, and I asked him the usual questions. I said "Mr. Storey, you declare this to be your last will and testament, and it is your request that we sign it for you, as witnesses?" He said "Yes," after I had read the will to him. I read the will over carefully to him, and it was drawn just as he wished it drawn.

Q. Do you know whose handwriting this is? (Indicating.) A. That is in Mr. Richardson's, Mr. Albert L. Richardson. He is out of the City.

Q. Can you state whether that was the envelope that you referred to, in which the will was enclosed? (Indicating.) A. Yes, sir that is it. I have some on hand now.

Q. You have some on hand? A. Yes, sir.

Mr. GRAHAM: I will offer that a little later.

The WITNESS: (continuing): I think that Mr. Richardson came

in at the time that the will was completed, and he enclosed it. That is my recollection of it; it has been so long.

Q. Could you describe from your recollection, the person who came in and signed that will—could you describe him? A. He was—I could not exactly describe him. He was a man of about sixty-five years. I had seen the man before.

Q. Was he a large built man? A. No, sir, he was not, as I recall him. He was not a very large built man—he had a mustache, and I think, whiskers; grayish whiskers.

Q. Was he gray?

Mr. EASBY-SMITH: Now, I object, if your Honor please, to this line of examination, especially to the leading ques-  
44 tions.

The COURT: Oh, yes.

Mr. EASBY-SMITH: There may be a thousand men that would answer one description, and the question is leading, at any rate.

Mr. GRAHAM: That is all.

Recross-examination by Mr. EASBY-SMITH:

Q. You said something about you didn't recollect perfectly whether Mr. Storey went out and came back and signed the will, or not? Did I misunderstand you? A. Yes, but I don't think he did that, Mr. Smith.

Q. You are not sure about it? A. No, I think he remained there. It has been so long it is pretty hard to——

Q. Mr. Jordan, do you know Mr. Storey sitting here by me? A. Yes, sir, I have met the gentleman.

Q. Do you remember a conversation that you had with him about two days after his grand-father's death? A. Yes, he came in to see me with another gentleman.

Q. Now, during that conversation, Mr. Jordan, did you not state to Mr. Storey that on the day that this man came to your office and signed this paper, that he was very feeble and was assisted from his buggy by Mr. and Mrs. Hunt? A. I don't recall that I said such a thing. This gentleman came to my office and insisted on my saying that this will was drawn——

Q. Now, I don't want that. Just a moment, please. You can explain it later. You don't recollect whether you said anything about Mr. and Mrs. Hunt, or not? A. I don't recall it. I may have said he was feeble.

Q. Do you remember saying this to Mr. Storey? That if a crazy man came to your office to make a will that you would make it all right for him. A. I don't remember that.

Q. Do you say that you didn't say that? A. No, sir, I don't think that I said that; I don't think I made such a statement as that. I would not make such a statement as that. I would be a poor business man——

Q. Well, will you state positively that you didn't say that?  
45 A. Yes, sir, I don't think I made any such statement as that, that I would make a will for a man if I knew he was crazy. A poor business man would do that.

By Mr. GRAHAM:

Q. Was there anything in the actions of the gentleman who came to your office which made you suspicious of him as to his mental soundness? A. No, sir, he didn't act as if he was. He acted as if he was of sound mind.

Q. Could you recognize the gentleman from a photograph? A. No, sir, I don't know that I could.

By the COURT:

Q. What became of the will after it was signed? A. It was delivered to him.

Q. He took it away with him? A. I think, as I say—it is four or five years ago—I think Mr. Richardson enclosed it then in his handwriting and handed it to him. I think he took it away with him. That is my recollection. I have drawn a number, we have, since that time.

(The witness was here excused).

Thereupon Miss MARY F. SHRYOCK, called as a witness on the part of the caveatees, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. GRAHAM:

Q. Is that your signature there, Miss Shryock? (Indicating). A. It is.

Q. Will you state the circumstances under which you signed that paper? A. They came in the office and it was dictated in the office and I wrote it for him.

Q. Who came in the office? A. Mr. Storey.

Q. Did you see these persons here sign? (Indicating.) A. Yes, sir.

Q. How did they sign? A. How did they sign?

Q. Did they sign at the same time, or—— A. Oh, yes, the witnesses signed at the same time.

Q. Did you see this name signed here? (Indicating.) A. Yes, sir.

Q. Who signed that name? A. Mr. Jordan.

Q. Who put that mark there? A. I can't say that; I suppose Mr. Storey did it.

Q. You don't know? A. I can't say, no.

46 Q. Did you see the gentleman who is alleged to have signed that will at the time he came into the office? A. Yes, sir.

Q. Did anyone else come with him, or did he come alone? A. There was a lady with him.

Q. Do you know that lady? A. No, I do not.

Q. Never seen her before? A. Never saw either of them before.

Q. You never saw either of them before? A. No, sir.

Q. Can you state who wrote that paper? A. Yes, I did.

Q. Can you remember as to whether that paper was written—how

many visits did Mr. Storey make to the office, if you can recall? A. That was the only one. He came in and it was written while he was there and signed.

Q. What was his actions at the time he came in—was there anything which would make you suspicious that——

Mr. EASBY-SMITH: I object to that on direct examination.

Mr. GRAHAM: Well, I will waive it.

Cross-examination by Mr. EASBY-SMITH:

Q. Miss Shryock, from what did you copy that paper? A. I didn't copy it — all; it was dictated to me.

Q. Did you take it stenographically? A. No.

Q. You wrote it on the machine? A. Wrote it on the machine.

Q. Who dictated it to you. A. I don't know; it was either Mr. Jordan or Mr. Richardson, I think.

Q. Now, that is important. I think that you should recollect, Miss Shryock. Can't you recollect? A. I can't.

Q. You can't recollect? A. No; it is so long ago I can't recollect who dictated it to me.

Q. You say there was a lady who came with this man for whom you wrote this? A. Yes.

Q. Who else was in the office, if you remember, except this man and the lady with him? A. No one else that I know of, except people that were usually in there; no one else.

Q. Now, who were they? A. Unless it was Mr. Jordan, Mr. Richardson and myself.

Q. Were they both there? A. I cannot recall. One of  
47 them was there.

Q. You don't know which one of them dictated this will do you? A. No, I do not.

Q. And the person who did dictate this to you, do you recall whether he dictated it from any notes, or from the suggestions of Mr. Storey, or from whom? A. Well, Mr. Storey told them what he wanted, and he dictated it to me.

Q. While you were writing it? A. I don't know. I think he told them what he wanted, whoever dictated it to me.

Q. Was Mr. Storey, or the man who is supposed to have signed this will, present in the room while you were writing on the machine? A. That I don't know.

Q. Now, Miss Shryock, will you look at that and see if you can state positively that those three sheets are the same three sheets that you wrote, and to which you attached your name as a subscribing witness? (Handing same to witness.) A. (After examining same.) Why, yes, I can tell my typewriting.

Q. All three of them? A. Yes.

Q. Is there anything about either the first or second pages which makes you sure that this is your work? A. No, but I—it certainly looks like mine, that is the only thing.

Q. When it left your possession, how was it fastened together, if at all? A. This way. (Indicating.)

Q. Did you fasten it? A. More than likely I did; I always did.

Q. Do you recall? A. No, I can't recall, but I did the typewriting, and it is more than likely I did.

Q. Now, Miss Shryock, if any erasures or changes exist in this paper, were they made before you signed your name as attesting witness? A. Before.

Q. Were there any made before? A. I don't recall, but if they were they were made before it was signed.

Q. If there were, they were made before it was signed? A. Yes, sir.

Q. You don't recall whether there were any or not? A. No, I do not.

Q. You never saw this man before he came in to make the will. A. Not to my knowledge.

Q. You never saw the lady before? A. No.

48 Q. Have you ever seen the lady since? A. No; I wouldn't know the lady if I would see her. I don't think I ever saw Mr. Storey again.

Q. Now, do you know Mr. Louis J. Smith? A. Yes, sir.

Q. You had known him before this occasion? A. Yes, sir.

Q. And you have known him since? A. Yes, sir.

Q. Where were you when you signed this paper, Miss Shryock? A. In the office, sir, of Jordan & Richardson.

Q. And was this man who made his cross mark present? A. Yes, sir.

Q. Who wrote his name in there? A. Mr. Jordan.

Q. And who put the cross mark there? A. I suppose Mr. Storey did.

Q. Miss Shryock this is important. We don't want what you suppose. A. How can I tell? It has been four years ago.

Q. Then, as a matter of fact, you don't know whether he made his mark, or not? A. No; I would suppose so; I am almost positive he did do it.

Q. Now, who was present when you signed your name to this? A. Mr. Jordan and Mr. Smith and Mr. Storey.

Q. When was this paper, if at all, read to the man whose cross mark appears on it? A. Before he signed it.

Q. And after you had written it? A. Yes.

Q. Was it read over in the presence of Mr. Smith and Mr. Jordan and yourself and the man who made his cross mark? A. I don't know that it was read over in Mr. Smith's presence.

Q. Can you tell whether it was or not? A. No, but I don't think so, because it would not interest Mr. Smith in the contents of the will.

Q. You think it was not read over in his presence? A. I don't think so, because he was not interested in it.

Q. And yet it was read over to him in the presence of yourself and Mr. Jordan? A. I suppose so, for I was in the office and wrote the will, and I suppose it was read over to him; I was right there.

Q. You are not sure? A. Well, I am almost sure it was.

Redirect examination by Mr. GRAHAM:

49 Q. Can you state what was done with the paper after it was executed? A. I can't, no.

Q. You can't? A. No.

Q. Do you recognize that writing? (Indicating.) A. Yes, sir.

Q. Whose writing is that? A. Mr. Richardson's handwriting.

Q. Could you, if you saw—could you tell from a picture the man who appeared in the office there and executed that will? A. I don't know whether I could or not, as I never saw him before.

Recross-examination by Mr. EASBY-SMITH:

Q. You say there was a lady came with this gentleman on that date? Do you recall how they came, whether they walked or came in a vehicle? A. I think they came in a vehicle.

Q. Came in a buggy? A. Yes, sir.

Q. Now, do you recollect whether or not a Mr. and Mrs. Hunt helped the old gentleman out of the buggy? A. No, sir, they were not there at all.

Q. I beg your pardon? A. They were not there.

Q. Were they outside? A. No; there was no one with them but the lady.

Q. Who went after Mr. Smith? A. I don't know, I suppose Mr. Jordan; I don't know.

Q. I didn't quite catch your answer. A. I said I didn't know.

Q. You don't know who went after Mr. Smith? A. No.

Q. Do you know Mr. Storey here? (Indicating.) A. No, sir.

Q. Did you ever see him before? A. Yes, I have seen him.

Q. Do you remember having a conversation with him a few days after James Storey died? A. I remember his coming in the office, but I don't remember having much conversation with him.

Q. Did you not state to him on that occasion that Mr. and Mrs. Jordan had assisted Mr. Storey from the buggy when he came there to make his will? A. No, sir, I did not; I remember that distinctly.

Q. You state that you did not? A. I did not, no sir.

(The witness was here excused.)

50 Thereupon LOUIS J. SMITH, called as a witness on the part of the caveatees, and being first duly sworn, testified as follows:

Direct examination by Mr. GRAHAM:

Q. This is your signature here, Mr. Smith? (Indicating.) A. Yes, sir.

Q. Can you state the circumstances under which you signed that paper? A. Well, I am in business just two doors above Mr. Jordan's real estate office, dry goods and shoe business, and he came in and wanted me to witness the signature to a will, and I came right in his office, and, of course, from what I can remember now, he introduced me to the gentleman, and he just went over with the will,



whatever it was, just the signature, you know, that we witnessed and swore to it and we signed it. That is all that I know about the case, not knowing either party.

Q. Did you sign there? (Indicating.) A. I signed there. That is my signature.

Q. Did you see this name signed here? (Indicating.) A. I did.

Q. Who signed that name? A. Mr. Jordan.

Q. Did you see that mark made there? (Indicating.) A. I did.

Q. Who made that mark? A. This gentleman, an old gentleman that was there. I think—I couldn't say for certain, now, whether he just took the pen or whether Mr. Jordan held the pen and he attested that with the mark. I cannot say, not paying much attention, and I am often called on, being by there, naturally, being in business fifteen years there, to witness wills and different other papers.

Q. Did these parties sign at the same time? A. All at the same time, right in my presence.

Q. Did the old gentleman say anything as to this—what this paper was? A. Now, I cannot say anything about that. All I know is that they spoke to me and introduced me, and then he swore  
51 him; they go over the words, you know, last will and testament; of course, he bowed his head to it. That is all I know about. That is all I know. I didn't know the gentleman; don't know a thing about it.

Q. Do you know what was done with that paper after it was executed? A. No, sir.

Cross-examination by Mr. EASBY-SMITH:

Q. Now Mr. Smith, do you know whether those two sheets which precede that sheet bearing your signature were attached to that third sheet at the time you signed your name to it? A. I could not say. All I know that they had a will there, whatever, it was, two or three sheets of paper. I don't know whether these are the same sheets or not, but it was just fixed, and my recollection is that it was just as it is there now.

Q. Now, you signed your name between Mr. Jordan and Miss Shryock? A. Yes.

Q. Was this will read over? A. No, sir, not to me.

Q. Was it read over in your presence? A. Not in my presence.

Q. Did you ever see Mr. James Storey before that time? A. Not to my knowledge.

Q. Did you ever see him after that time? A. Not to my knowledge.

Q. Did you know who he was? A. Only being introduced to him in Mr. Jordan's office.

Q. You don't know whether those sheets, all fastened together here with these fasteners, were fastened together or not—— A. I don't know whether these are the same sheets, but I know there is more than the one sheet of paper fixed just as it is now.

Q. You didn't see any of that at all? (Indicating.) A. Not at all.

Q. All you saw was this last sheet? A. That is all that was turned over to me to sign, you know. Having witnessed several wills, I naturally——

Q. Now, Mr. Smith, if there are any changes or re-writings in this paper, do you know anything about them? A. In the will?

Q. Yes. A. Oh, no; no, indeed.

Q. There was no mention made of any corrections or changes before it was signed? A. No, indeed.

Q. Or after it was signed? A. Not to my knowledge?

52 Redirect examination by Mr. GRAHAM:

Q. Could you recognize the gentleman who appeared in the office at that time, who was there and made his mark to the paper, from a photograph? A. Well, now, I couldn't say. I could not say whether I could or not.

(The witness was here excused.)

Thereupon NEWTON CORNWELL, called as a witness on the part of the caveatees, and being first duly sworn, was examined and testified as follows:

By Mr. GRAHAM:

Q. Where do you live, Mr. Cornwell? A. Prince George's County, Maryland?

Q. How long have you lived there? A. About ten years, sir, going into ten years.

Q. What is your business? A. Well, my business now is gardening.

The COURT: What is it you are undertaking to prove by this witness?

Mr. GRAHAM: To show the possession of the will, of this paper.

The COURT: Yes, go on.

By Mr. GRAHAM:

Q. Do you know Mr. James Storey? A. Yes, sir.

Q. How long have you known him? A. Well, about twenty-eight years, or twenty-nine years, something like that.

Q. Were you related to him? A. Well, he was my father-in-law, sir.

Q. Did he ever live with you? A. About thirteen years, sir.

Q. When was that? A. Well, from about 1890, or something like that, up until two years before his death.

Q. Can you state positively or definitely—— A. (Interposing). Well, no, sir, I could not say exactly the day or date, but it was about thirteen years that he was at my house.

Q. I mean as to how long ago it was that he left your house? A. Oh, about two years ago, sir, as far as I can remember. He left my house and came to Washington.

Q. Will you look at that and state whether you can recall what that is? (Handing witness paper.) A. (After examining same.) Well, sir that looks to me like an envelope his will was in.

Q. Can you state where that envelope came from?

Mr. EASBY-SMITH: I object. When? At what time the envelope came from?

Q. What was the condition of that envelope when you first saw it?

Mr. EASBY-SMITH: I object.

A. It was sealed up when I first saw it.

The COURT: Sealed up, you say?

A. Yes, sir, it had not been opened.

By Mr. GRAHAM:

Q. When did you first see that? A. After he died.

Mr. EASBY-SMITH: I object to all the evidence and ask that it be stricken out, your Honor.

The WITNESS: After he died——

Mr. EASBY-SMITH: I object to any of his evidence about that envelope. He says he didn't see it until after he died.

The COURT: I thought you were going to prove where it was found—where the will was?

Mr. GRAHAM: Your Honor that is what we are going to do, and under what circumstances it came to his possession.

The COURT: Go on.

Mr. EASBY-SMITH: He said he was going to prove the custody of the will, and all of that.

Mr. GRAHAM: Well, that is what I am going to prove.

By Mr. GRAHAM:

Q. When did you first see this paper? A. In that envelope you have there?

Q. Yes. A. After he died.

The COURT (to the witness): Where, he said?

The WITNESS: At my house, in his bureau drawer.

By Mr. GRAHAM:

Q. How did you get hold of that will? A. He told me when he left my house, a month before he died—he told me about a month before he left my house that he had made a will, and after his death he wanted me to go to his bureau and get his will and carry it in Washington to his children.

Q. Is this the paper that you found in his bureau drawer? (Indicating). A. That is the paper, sir.

Cross-examination by Mr. EASBY-SMITH:

Q. Now, Mr. Cornwell, you say you are a son-in-law of Mr. Storey? A. Yes, sir.

Q. Was your wife living at the time that he died? A. My wife?

Q. Yes. A. She is living to-day, sir.

54 Q. And how long before he died did she die? A. My wife is living now.

Q. Oh, I beg your pardon. I thought you said she was dead? A. No, sir.

Q. Then Mr. Storey lived with you until about two years before his death? A. About that, somewhere; I didn't put it down, or count it.

Q. And you say you found this—— A. (Interposing.) In his bureau drawer, just where he told me to find it.

Q. In your house? A. After his death. He told me where to find it. A month before he left my house to told me he was going home in Washington, and that when he did his will was in the bureau drawer and for me to get it and present it to his children.

Q. Your wife was one of his children, wasn't she? A. My wife, yes, sir.

Q. Sir? A. Yes, sir, my wife is one of his children.

Q. What did he do with his other effects when he left your house? A. I don't know any effects he had. If he had any he carried them with him.

Q. Did he take his clothing and his trunk away from your house? Q. He taken all that belonged to him, his satchel and things that were there.

Q. What else was in the bureau, Mr. Cornwell? A. Nothing, as I know of, sir.

Q. He left this lone envelope in the bureau, and told you, his son-in-law, your wife being his daughter, that after he died you were to look in the bureau drawer and get the will and take it to his children? A. That is just what he told me, sir, to get this will and carry it to his children, that he had in his bureau drawer.

Q. Now, after he died, when did you go and get this paper and bring it to his children? A. I got it on Christmas morning and carried it over to them.

Q. Carried it to whom? A. At Mrs. Johnson's house, where all of his children met, and where he was buried from.

Q. Did you give it to your wife? A. No, sir.

Q. She was one of his children, wasn't she? A. Yes, sir, but I gave it to Mrs. Johnson, the executor of Mr. Storey.

Q. Before you delivered the will to them, did you tear it open?

A. No, sir.

55 Q. How did you give it to them? A. I handed it to them in their hands.

Q. In this sealed envelope? A. Yes, sir.

Q. Was that torn open? A. No, sir.

Q. Had this ever been opened? A. No, sir.

Q. Or re-sealed? A. Not that I know of.

Q. How did you know that Mrs. Johnson was the executrix? A. How did I know she was?

Q. Yes. A. I found out after it was read, she being the oldest of James' sisters, when I handed the will to them.

Q. I don't want to misunderstand you. You said, when I asked you why you gave it to Mrs. Johnson, you said because she was the executrix? A. I found that out afterwards, that she was the executor, you know.

Q. But what was the reason that made you take it to her before you knew she was the executrix? A. No, sir, no reason for it. I carried it and delivered it just as he told me; when he was dead to take and carry it to his children.

Q. To carry it to Mrs. Johnson? A. To carry it to his children. Mrs. Johnson is where he died at. That is where he made his home and died at.

Q. Oh, he died at Mrs. Johnson's? A. Yes, sir.

Q. And yet he made his will and left it in your bureau drawer? A. Yes, sir, in my care.

Q. After you found it, you took it to Mrs. Johnson, the other child? A. After he died, I done as I told you; I taken the envelope and carried it there. He told me he had made the will a month before he died.

Q. Did he ever tell you before that *that* he had made a will? A. No, sir.

Q. Then, if that is true, the will was made nearly four years before he died? A. I don't know when the will was made.

Q. Did he tell you when he told you to give this will to his children, that he had made his daughter, Mrs. Johnson, his executrix? A. No, sir. He told me nothing at all. The only statements he ever made to me was about five or six years ago, that he wished he had four houses, so he could leave all of his children a house apiece. That is the only statement he ever made to me, and I never knowed that he had made a will.

56 Q. How many children did he have alive when he died? A. Four.

Q. He had another son who died before he made the will? A. Yes, sir.

Q. Were you present when this envelope was torn open? A. I was right there in the house.

Q. Who tore it open? A. I think Mrs. Johnson, is the lady.

Q. Who was present? A. The children, my wife, myself, her husband, her son, Mr. Storey, James Storey, were all present.

Q. This Mr. Storey? (Indicating.) A. Which?

Q. Here. (Indicating.) A. Oh, no.

Q. His uncle? A. Yes, sir.

Q. And Mrs. Johnson tore it open? A. Yes, sir.

Q. When, after she tore it open and took it out, did you have it in your possession? A. I never had it in my possession at all after I gave it to them.

Q. Did you ever see that paper? (Indicating.) A. Never in my life.

Q. Did you ever have it in your hands? A. Never in my life, sir.

Q. Then, you don't know whether that is the paper that was in that envelope? A. I could not tell what paper. The will was in the envelope, I suppose. They taken it out and read it; I heard it read.

Q. Did you ever hear Mr. Storey tell anybody except yourself that he had made a will? A. No, sir, never in my life. He was

a man that always attended to his own business. He didn't talk business to me, he done business for me though.

Q. And you never saw this paper at all and don't know what became of it at that time? A. No, sir.

Q. You say you carried this there on Christmas day? A. Yes, sir, I carried it to the house on Christmas day.

Q. When did the old man die? A. The 18th of December, I think; something like that, as near as I can remember. I didn't keep account of anything like that, sir.

Q. Didn't you, as a matter of fact, let ten days go by before you delivered this will to anybody? A. No, sir.

Q. Well, you say this man died about the 18th of December? A. Something like that, sir.

57. Q. The- it was Christmas day when you took this there?

A. Yes, sir.

Q. And you know it was the will? A. There is his name to it.

Q. Did it have anything besides his name on it? A. I don't know, sir; I just seen his name. He told me where to find his will at, in his bureau.

Q. According to your account, after seven days, you took the will—— A. (Interposing.) I ain't said nothing about seven days, sir, at all. I told you I got the will——

Q. Well, I want to fix the time, now. You say you think he died on the 18th of December? A. I could not tell you exactly when he died; I didn't keep any account of that at all.

Q. And it was Christmas day when you carried this to the children? A. When I carried that envelope to them, yes, sir.

Redirect examination by Mr. GRAHAM:

Q. You say you heard the will read? A. Yes, I heard it read.

Q. Can you read? A. No, sir, not very good. My eyesight has failed me. I can read all right if I have a pair of glasses to suit them. I left them at home.

Q. If you heard the paper read, could you recognize it, whether that was the paper which was taken out of this envelope? A. Yes, sir.

The COURT: Don't spend any further time on that.

(The witness was here excused.)

Thereupon MARY JOHNSON, called as a witness on behalf of the caveatees, being first duly sworn, was examined and testified as follows:

By Mr. GRAHAM:

Q. Mrs. Johnson, I will ask you if you knew James Storey? A. Yes, sir.

Q. Is he living or dead? A. He is dead.

Q. When did he die? A. The 18th of December, 1905.

Q. You were related to Mr. Storey, were you not? A. Yes, sir.

Q. What relation? A. Daughter.

58 Q. Do you ever remember of seeing that paper before?

(Indicating.) A. Yes, sir.

Q. Can you state in what condition that paper was when you first saw it? A. Sealed up.

Q. Sealed up? A. Yes, sir.

Q. When did you first see that paper? A. Christmas day.

Q. Where did you first see it? A. I seen it in my home.

Q. Under what circumstances? A. My brother-in-law brought the paper to me.

Q. And gave it to you? A. Yes, sir.

Q. Were you present when that paper was opened? A. Yes, sir.

Q. Can you state as to who opened the paper? A. I did.

Q. What did you find on the inside of that paper, if anything? A. Nothing at all, except the paper—the will.

Q. Will you look at this paper and state whether that was the one that you referred to as having found on the inside (indicating)?

A. Yes, sir.

Q. You say that is the paper? A. Yes, sir.

Q. What did you do, if anything, with that paper, after you received it? A. I did not do anything but brought it right up to you.

Q. You brought it up to me? A. Yes, sir.

Q. Can you state as to when that paper first came into your possession? A. Christmas day.

Q. Christmas day? A. Yes, sir.

Cross-examination by Mr. EASBY-SMITH:

Q. Who was present when this paper was opened, Mrs. Johnson? A. My brother and my sisters and my husband and my brother-in-law.

Q. Now, you mean by your brother-in-law, Mr. Cornwell? A. Yes, sir.

Q. And your sister, Mrs. Cornwell? A. Yes, sir.

Q. And your brother, what is his name? A. James Storey.

Q. He is now dead, I believe? A. No, sir.

Q. He is still living? A. My brother is still living, yes, sir.

Q. And Mrs. Cornwell? A. That is my sister-in-law.

Q. Now was there another sister? A. Yes, sir, Mrs. Isabel Branson.

Q. You say you tore that open, Mrs. Johnson? A. I did, sir.

Q. Who gave it to you? A. My brother-in-law, Mr. Cornwell.

Q. What, if anything, did he say when he gave it to you?

59 A. He just handed me the paper, and said this is your father's will.

Q. Your father's will? A. Yes, sir.

Q. Had you all pre-arranged this meeting on Christmas day in order to open and read your father's will? A. Yes, sir.

Q. How long before Christmas Day had you pre-arranged it? A. On Saturday. My father was buried on Thursday, and Saturday we arranged a meeting Christmas Day to read the will.

Q. Who was to bring the will? A. My brother-in-law.

Q. How did you know your brother-in-law had it? A. My father told me so.

Q. Told you so? A. Yes, sir, and also my brother.

Q. Also your brother? A. Yes, sir.

Q. Told you who had it? A. Yes, sir.

Q. That Mr. Cornwell had it? A. Yes, sir.

Q. Now, your father lived at your house about two years before his death, did he not? A. Yes, sir.

Q. Did he have his trunk there? A. No, sir.

Q. Did he have any of his belongings there? A. Just his wearables, that is all.

Q. Where did he keep his other effects? A. At Mr. Cornwell's, my brother-in-law.

Q. What else did he keep at Mr. Cornwell's? A. Nothing but little furniture, and his trunk; that is all.

Q. Now, Mrs. Johnson, when did you first know that you were the executrix of this will? A. When it was read.

Q. You didn't know you were executrix until after it was opened, then? A. No, sir.

Q. Do you know whether or not Mr. Cornwell knew that you were the executrix? A. No, sir.

Q. I say, do you know whether or not Mr. Cornwell knew it before it was opened, that you were the executrix? A. No, sir, I do not.

Q. You, yourself, didn't know it? A. No, sir.

Q. Your father had never told you? A. No, he never told me I was executor for it.

Q. And did he ever tell anyone, so far as you know, that you were to be executrix? A. No, sir.

Q. So that no one knew of this will, or of the fact that you were made executrix? A. No, sir.

60 Q. Can you say just why Mr. Cornwell brought it and delivered it to you rather than to your brother or to one of the other sisters? A. No, sir.

Redirect examination by Mr. GRAHAM:

Q. You stated that you first knew of this will because your father told you? A. Yes, sir.

Q. When did he tell you? A. The month before he died, that my brother-in-law had it at home in his drawer, in the bureau drawer.

By the COURT:

Q. Are you the oldest one of the children? A. No, sir.

Q. Who is the oldest? A. My brother.

Q. James? A. Yes, sir.

The foregoing is all the testimony offered by the caveatees.

Thereupon counsel for the caveatees offered in evidence the paper-writing testified to by the witnesses, and counsel for the caveatees objected to the offer as follows:

Mr. EASBY-SMITH: I object to the will now, your Honor.

The COURT: What is the objection?

Mr. EASBY-SMITH: Why, there are several objections. In the first



place, your Honor, there is absolutely no proof here that James Storey, deceased, in this case, is the man who went into Jordan & Richardson's office and made the mark to that paper, not a scintilla of proof. Not one of these three attesting witnesses knew him, and nobody—this woman who took him there, she has not been produced here.

The COURT: Mr. Jordan said that he had known him and had seen him before.

Mr. EASBY-SMITH: But I asked him specifically, your Honor, if he knew who he was, and he said he had seen him around some store or other, but didn't know who he was; that he didn't know his name, and that he never knew before that time who he was at all.

The COURT: Do you say he was not the man—was not the Storey who signed that will?

61 Mr. EASBY-SMITH: Well, your Honor, I say there is not a scintilla of proof here that he is the man who did sign it.

It seems to me that the burden of proof is not on me to show that he didn't sign it, but on the other side to show that he did. There is not a scintilla of proof here to show it. Furthermore, there are erasures and changes here. I don't know what has been rubbed out and what has been written over, but I can point out to your Honor some of the changes. One of the most apparent is—I will have to read it over and catch them. Now there is a change here, your Honor, but that is not the one. I will catch the one that I saw before.

The COURT: Change in typewriting, you mean, somewhere?

Mr. EASBY-SMITH: Yes, and those one-fourths or one-fifths, or something is changed here. Here is a change, that is rubbed out so closely that you can hardly see it, "Last sickness and funeral and one-fourth" interest—under that something has been erased and something written over it. There are other changes of the same sort right straight through it.

The COURT: The typewriter's corrections, I think.

Mr. EASBY-SMITH: Well, your Honor, they are not explained. I asked the typewriter on the stand and she said she knows nothing about it. I asked Mr. Jordan and he said he knew nothing about it.

The COURT: It is her typewriting, she says, the will was. I think a *prima facie* case is made here, Mr. Easby-Smith.

Mr. EASBY-SMITH: Your Honor, I have a further objection to this will as to the custody of this will. It seems to me it is produced here under very suspicious circumstances. It is admitted that the decedent, in this case lived with his son-in-law and his daughter, Mrs. Cornwell, until two years before his death, and he left there and took all of his belongings over to Mrs. Johnson, and this man who is brought here who produced this will, is the only witness who attempts to prove the custody of this will. He says he found it in  
62 an empty bureau drawer; that his father-in-law told him a month before he died that it was there, although he said that he didn't know that Mrs. Johnson was the executrix until after he had read it.

But the court overruled the objections and admitted the paper in

evidence, to which ruling the caveator then and there reserved his exception. The envelope testified to by the witnesses for the caveatees was not formally offered in evidence.

Thereupon counsel for the caveator stated that he had no evidence to offer.

Thereupon counsel for the caveatees moved the court to direct a verdict as follows:

Mr. GRAHAM: I think, as to the first issue, the answer should be "Yes." As to the second issue, the answer should be "Yes." As to the third "No," and as to the fourth "No." I will ask your Honor to instruct the jury to return a verdict accordingly.

The COURT: Well, gentlemen of the jury, under this testimony in this case, there being no further evidence in the case, you may return a verdict in favor of this will, answering the first and second interrogatories "Yes" and the third and fourth interrogatories "No." The clerk will take it in proper form.

To which ruling the caveator then and there noted his exception.

To the end that justice may be done in the premises, and that the questions raised by the foregoing exceptions may be reviewed and determined on appeal, the said caveator, James P. Storey, prays the Court to sign and seal this his Bill of Exceptions, as of and for the time the same were noted; which is accordingly done, now for then, this 11th day of January, A. D., 1907.

JOB BARNARD, *Justice*. [SEAL.]

(Endorsement: Bill of Exceptions. Copy of notice to settle bill, and affidavit of service. Filed Jan. 11, 1907. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

63 In the Supreme Court of the District of Columbia, Holding a Probate Court.

*In re* Estate of JAMES STOREY, Deceased. Admn., No. 13362.

By the consent of the parties through their attorneys, the Clerk is hereby directed to prepare forthwith the transcript of record on appeal as follows:—

1. Petition for Probate, filed, December 28, 1905.
2. Decedent's will.
3. Order appointing Eli Kinchloe Guardian *ad Litem*, dated January 10, 1906.
4. Answer of Eli Kinchloe, Guardian *ad Litem*, filed January 10, 1906.
5. Caveat filed January 10, 1906.
6. Order appointing Lemuel Fugitt Guardian *ad Litem* dated April 26, 1906.
7. Answer of Lemuel Fugitt, Guardian *ad Litem*, filed April 30, 1906.
8. Letter of Lemuel Fugitt, Attorney for Caveators, to the Court, dated May —, 1906.
9. Letter from Clerk of Court to W. Russell Graham, dated May 26, 1906, inclosing copy of letter of Lemuel Fugitt.
10. Motion to frame issues.

11. Order framing issues, dated June 1, 1906.
12. Motion to fix time and place of trial of issues.
13. Order fixing time for trial of issues, dated August 31, 1906.
14. Waiver of notice, etc., filed October 23, 1906.
15. Motion to assign a new day for trial, filed October 23, 1906.  
Endorsement overruling motion and exception.
- 64 16. Minute entry of verdict October 23, 1906.
17. Order admitting will to probate November 28, 1906.
18. Motion for allowance of appeal, severance and to fix bond, and affidavit, filed December 4, 1906.
19. Order fixing bond on appeal, dated December 10, 1906.
20. Notice of deposit of costs, December 20, 1906.
21. Order extending time to settle Bill of Exceptions.
22. Bill of Exceptions.
23. This designation of record.

J. S. EASBY-SMITH,  
*Att'y for Caveator, James P. Storey.*  
W. RUSSELL GRAHAM,  
HERBERT A. WRENN,  
*Attorneys for Caveatees.*

(Endorsement: Stipulated designation of Record on Appeal.).

65 Form No. 94.

Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *to wit*:

I, Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify the foregoing pages, numbered from 1 to 64, inclusive, to be true copies of the originals of certain papers on file in the office of the Register of Wills, Clerk of the Probate Court, in case No. 13,362 estate of James Storey, deceased, wherein James P. Storey and Annie Cordelia Schley are appellants, and James Storey and Mary Johnson are appellees, the same constituting a full, true and correct transcript of record of proceedings had in said cause according to the designation of counsel filed therein and made a part hereof.

I further certify, that the money in lieu of bond for appeal, in the penalty of One Hundred dollars, was duly filed by said appellants, and receipt therefor recorded in said Court on the 20th day of December, A. D. 1906.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Probate Court, this 12th day of February, A. D. 1907.

[Seal Supreme Court of the District of Columbia, Probate Jurisdiction.]

W. C. TAYLOR,  
*Deputy Register of Wills for the District  
of Columbia, Clerk of the Probate Court.*

Endorsed on cover: District of Columbia supreme court. No. 1755. James P. Storey *et al.*, appellants, *vs.* James Storey *et al.* Court of Appeals, District of Columbia. Filed Feb. 12, 1907. Henry W. Hodges, clerk.